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11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DOTCONNECTAFRICA TRUST, a
15 Mauritius Charitable Trust;

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND NUMBERS,
20 a California corporation; ZA Central
21 Registry, a South African non-profit
22 company; and DOES 1 through 50,
23 inclusive;

24 Defendants.

Case No. 2:16-cv-00862-RGK (JCx)

**PLAINTIFF’S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF ITS OPPOSITION TO
DEFENDANT ZA CENTRAL
REGISTRY, NPC’S MOTION TO
DISMISS FIRST AMENDED
COMPLAINT**

Date: May 31, 2016

Hearing: 9:00 a.m.

Courtroom: 850

[Filed concurrently: Plaintiff’s
Opposition to Defendant ZA Central
Registry’s Motion to Dismiss First
Amended Complaint]

1 **TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Pursuant to Federal Rule of Evidence 201,
3 Plaintiff DOTCONNECTAFRICA TRUST (“DCA”) hereby requests the Court take
4 judicial notice of the following documents, attached as Exhibits 1–3, in support of
5 DCA’s Opposition to Defendant ZA Central Registry, NPC’S (“ZACR”) Motion to
6 Dismiss First Amended Complaint:

7 1. The New gTLD Applicant Guidebook (“Guidebook”), a true and
8 correct copy of which is attached hereto as **Exhibit 1**.

9 2. Contract SA 1301-12-CN-0035, between ICANN and the U.S.
10 Department of Commerce, a true and correct copy of which is attached hereto as
11 **Exhibit 2**.

12 3. Webpage printout of website titled: “What is dotAfrica?” accessible at:
13 <http://africanonespace.org/content.php?tag=5&title=What+is+dotAfrica%3F>. A
14 true and correct copy of which is attached hereto as **Exhibit 3**.

15 When ruling on a 12(b)(6) motion, a court may look beyond the pleadings “at
16 documents incorporated by reference, and matters of which a court may take judicial
17 notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2509 (2007).

18 Under the incorporation by reference doctrine, a court may consider a
19 document when plaintiff’s complaint necessarily relies on it and its authenticity is
20 uncontested. *Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002); *see also In re*
21 *Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999). This includes
22 documents that are not attached or explicitly referenced by plaintiff’s complaint.
23 *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1114 (C.D. Cal. 2003).

24 Under Federal Rule of Evidence 201, judicial notice is proper when a fact is
25 not subject to reasonable dispute and capable of accurate and ready determination
26 by resort to sources whose accuracy cannot reasonably be questioned. *Wible v.*
27 *Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 966 (C.D. Cal. 2005); Fed. R. Evid. 201.
28 Judicial notice of information obtained from a website is proper when neither party

1 questions the authenticity of the site. *Pollstar v. Gigmania Ltd.*, 170 F. Supp. 2d
2 974, 978 (E.D. Cal. 2000). A Court may take judicial notice of a matter of public
3 record. *Moore v. Navarro*, 2004 U.S. Dist. LEXIS 6039, *5 (N.D. Cal. Mar. 31,
4 2004.)

5 **The New gTLD Applicant Guidebook and Modules (Exhibit 1)**

6 The Guidebook and Modules are referenced and relied on throughout
7 Plaintiff's FAC. (*See, e.g.*, FAC ¶¶ 20, 22, 25, 66, 74.) ZACR has also requested
8 the Court take judicial notice of Module 6 of the Guidebook (*See* Defendant's RJN.)
9 In its RJN ZACR agrees that at least as to module 6 "there is no dispute as to the
10 authenticity." (*Id.* at 3:27-28). Finally, the Guidebook is available on ICANN's
11 website at <https://newgtlds.icann.org/en/applicants/agb>.

12 **Contract SA 1301-12-CN-0035 (Exhibit 2)**

13 On a Rule 12(b)(6) motion, the Court may take judicial notice of matters of
14 public record. *Moore v. Navarro*, 2004 U.S. Dist. LEXIS 6039, *5 (N.D. Cal. Mar.
15 31, 2004.) The contract is a public record as it is available on the U.S. Department
16 of Commerce's website at: [https://www.ntia.doc.gov/files/ntia/publications/
17 sf_26_pg_1-2-final_award_and_sacs.pdf](https://www.ntia.doc.gov/files/ntia/publications/sf_26_pg_1-2-final_award_and_sacs.pdf). Lastly, the contract is not in dispute as
18 ICANN itself has made it available on its website: [https://www.
19 icann.org/en/system/files/files/contract-01oct12-en.pdf](https://www.icann.org/en/system/files/files/contract-01oct12-en.pdf).

20 **"What is dotAfrica?" Webpage (Exhibit 3)**

21 The webpage comes directly from ZACR's own website. "A court must take
22 judicial notice if a party requests it and supplies the court with the requisite
23 information. 'A judicially noticed fact must be one not subject to a reasonable
24 dispute in that it is either (1) generally known within the territorial jurisdiction of the
25 trial court or (2) capable of accurate and ready determination by resort to sources
26 whose accuracy cannot reasonably be questioned.'" *Wible v. Aetna Life Ins. Co.*, 37
27 F.Supp.2d 956, 966 (C.D. Cal. 2005) [granting request for judicial notice as to
28 webpage of American Academy of Allergy Asthma & Immunology]. Furthermore,

1 DCA does not request judicial notice for the truth of the statements contained in the
2 webpage, but rather to show that the statements were made. *See e.g. Farah v.*
3 *Esquire Magazine, Inc.*, 863 F.Supp.2d 29, 35 (D.C.C. 2012). Webpage accessible
4 at: <http://africanonespace.org/content.php?tag=5&title=What+is+dotAfrica%3F>.

5
6 Dated: May 10, 2016

BROWN NERI & SMITH LLP

7 By: /s/ Ethan J. Brown

8 Ethan J. Brown

9 *Attorneys for Plaintiff*

10 DOTCONNECTAFRICA TRUST

CERTIFICATE OF SERVICE

I, Ethan J. Brown, hereby declare under penalty of perjury as follows:

I am a partner at the law firm of Brown Neri & Smith, LLP, with offices at 11766 Wilshire Blvd., Los Angeles, California 90025. On May 10, 2016, I caused the foregoing **PLAINTIFF’S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS OPPOSITION TO DEFENDANT ZA CENTRAL REGISTRY, NPC’S MOTION TO DISMISS FIRST AMENDED COMPLAINT** to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on May 10, 2016

/s/ Ethan J. Brown